

G. R. S. IX-5]

Previous references.

ul no. 2528-72 8 22/8/71

840 109 27-2-93.
Smug: 911 2 6/6/93
ms 2 58/72

Later references.

200-7 86/12/94

2167 317-5-04

3816-240

4007 8 24/6/04

ms 32-01

2017-26 8 25/1/05.

27 188-4

5096-10318 5/5/08.

later 102 61-28, 1-5

Pol 84 387-32 Pol. 76-46-4

Pol. 210-48(1)

Preserve

1917.18

(Police)

P25

File No. 116-17

Serial Nos. 1-2

Serial Nos. 1-2.

Part B for

January 1919

SUBJECT.

Issues instructions in the matter regarding
Grant of permission to Conduct Procession
in public streets.

Sl. no 2. To the Director Genl of Police.
The District Magistrate of 86
The Registrar Chief Court.
No. C, 15597-608 3 17-1-19.
Pol 116-17-2

Is issuing instructions in the matter
re grant of permission to Conduct
Procession in Public Streets.

GENERAL AND REVENUE SECRETARIAT.

(Police)

NOTES.

File No. 116-17

FILE HEADING.

*Rules for the guidance of magistrates in granting
licenses for processions.*

From

No.	Dated	Received
Diary No.	Enclos.	Spare Copies.
		Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

82 nold

J. 1161

Copy of judgment of the
chief court in Regular Appeal no
140 91916-17.

Submitted.

AML
25/11/17

1) The main point ~~was~~ brought
forward in the judgment is that
the Amildar should have tried to
enforce the rights of the party under them
was an imminent danger of breach
of peace instead of trying to ascertain
the 'manuscript' message. It is a point
for order which aspect of the judgment
may be sent to the District Magistrate for
information ~~and guidance~~ ~~and to be used to~~
the District Magistrate's magisterial.

3) submitted for order

E.
27.11.17

Chief Secretary

4) I think it is desirable to
prepare & issue a circular to
the guidance of executive officers
in such cases. There is often a tendency
to reopen settled questions & start futile
enquiries on the objections of people & all
sorts. The circular should point out the
main principles as expounded

N.B.—Should routine notes be written on small slips,
the notes must be copied, or slips pasted on this form.

GRSM. SL.382.

by judicial decisions of the orders
& indicate what are left to
discretion and to local circumstances. The
circular may be sent to the
Division before issue.

E.S.

5/12/17

Serial
No.

5)

Submitted for orders as to whether this maybe transferred to the Police Section where questions about procedure are dealt with.

AM
6/12

6) 44

S. 6/12

The envelope has
to be returned
to the person who
procured it
& was received
back on 17.12.17
The letter with the
order is to be received
by the person who
procured it
23.1.18

7(2)

7)

G.O. no. 109-D.H.O. of 27.2.93

Lays down certain principles for the guidance of magistrates in such cases. In the judgment of the Chief Court now set up there seems to be nothing which is not contained in that order. In 1901 the question of issuing a set of rules on the subject was considered but it was ~~not decided~~ and a statement of law on the subject was put up by Mr. Channar Khara Dya after consulting all the orders and legal provisions ^{& judicial decisions} relating to the matter but it was ~~considered~~ thought that as the order of 93 contained the necessary instructions a separate set of rules was unnecessary.

Vide F.L.H., linked file

8) Subd. for orders with

references.

B. 4
23.1.18.

9)

Since the rules are well known and have been stated to some extent in 1893 proceedings.

G. R. S. III-2]

General and Revenue
Secretariat.

Police File No. 116 of 1917-18

Serial
No.

Please put up draft drawing the attention of the
magistrate and the District to the facts of the leading
cases of the chief court. The 205 which subject and that
the principles to be recognized are generally overlooked.
The District Magistrate's view is as before unnecessary
expense and annoyance, and that they should be
strictly followed in future.

10) Subd. with a draft as directed.

8.5.
8.2.18.
W
8.2.18

11) Please put up typed draft
for Subd. to Member

12) Typed draft subd.

8.5.
30.7.18.
W

Submitted for favour of
approval.

Unifed) 2nd member

2478
3-1-19

The circulars issued are
more than the will know principles
of Law. It is not meet that the
issue of a fresh circular will mind
matters in any way. However, there is
no harm in recommending the Magi:

Notes of the day 2 replaced
the circular may issue. The
3.1.19

General and Revenue
Secretariat.

Police File No. 116 of 1917-18

Serial
No.

Please put up draft drawing the attention of the magistrates and officers to the merits of the leading cases of the chief court. The 90s rules subject and that the principles to be recognised are generally overlooked by the district magistrates. This is a waste of unnecessary expense and annoyance, and that they should be strictly followed in future.

10) Subd. with a draft as directed. 8/24/1

8/5.
8.2.18.
9/11
8.2.18

11) Please put up typed draft for Subd. & Member 8/27/8

12) Typed draft subd.

8/5.
30.7.18.
with

Submitted for favour of approval. 8/9/12

unifed. 2nd member. 8/27/12

The circulars issued are more than the well known principles of Law. It is not meet that the issue of a fresh circular will mislead matters in any way. However, there is no harm in recommending the Magistrate.

Walter J. H. de J. & Co. 2. 1. 1919. The circular may issue. 3.1.19

G. R. S. III-2]

General and Revenue
Secretariat.

File No.

116

of 1917.

Serial
No.

2

J.

The S. E. & Police

The Dist. Magistrates & Dto

The Registrar Gen. Court.

no 9,15597-608 27-1-1919

Issues instructions in the
matter re grant of permission to
conduct Processions in Public Streets

B
27/3
RANCH.
20 MAR 1919
CH. P.

CHIEF COURT OF MYSORE,

BANGALORE.

Dated 20th November 1917.

21st

From

N.E. GOPALIENGAR, Esquire, B.A., LL.B.,
Registrar of the Chief Court of Mysore.

To

C.S. BALASUNDARAM IYER, Esquire, B.A.,
Chief Secretary to the Govt: of Mysore,
Bangalore.

Sir,

I am directed to forward herewith for the information of the Government a copy of judgment in Regular Appeal No. 140 of 1916-17 on the file of this court.

I have the honour to be,

Sir,

Your most obedient servant,

N. E. Gopalengar

REGISTRAR.

gt.

N.G.

GEN. & REV. SECRETARIAT
IN
JUDICIAL
23 NOV 1917

1917-18 (S)
SECTION *CS*
FILE NO. 116-17
SERIAL NO. 1

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Monday, the 8th day of October 1917.

Present.

Mr. Justice K.S. CHANDRASEKHARA AIYAR

and

Mr. Justice T.PARAMASIVA IYER.

Regular Appeal No. 140 of 1916 - 17.

1. Chickaveerasetty	/	
2. Maralu Shankarappa	/	
3. Marigangayya	/	
4. Marisiddayya	/	
5. Krishnaswamy Mudaliar	/	
6. Hanumanthayya	/	
7. Mooniappa	)	...Lefts... Appellants
8. Lakkappa	/	
9. Hanumantha	)	
10. Seebayya	/	
11. Tirumalayya	)	
12. Dooda Kanjundappa	)	

Vs.

Hutchappa ... Plaintiff ... Respondent

Mr. N.K. Srinivasa Rao Regular Appeal against the decree of the Munsiff
of Doddaballapur (Mr. N.K.Srinivasa Rao) in C.S. No. 390
of 1913-14.

This appeal coming on for hearing on Friday, the
17th day of August 1917, the court delivered the following:

J U D G M E N T.

The points arising in the case have been well
well discussed in the judgment of the Munsiff; and his
conclusions are, in our opinion, substantially correct.

So far as appellants 1 to 4 are concerned, the matter in controversy is clearly res judicata by virtue of the decision of this Court in R. A. 211 of 1908-09, wherein the community to which they belong was duly represented as a party.

✓ Upon the evidence also, we agree with the Munsiff that the appellants, who were defendants in the court below, have failed to discharge the burden that lay on them of making out a recognised valid custom debarring the plaintiff-respondent from going in procession through the Desadapete, which is one of the public streets of Tyamagondlu. The principles applicable to a case of this nature have been so often judicially expounded (among others, in the very decision of this Court referred to above, and reported in 16 Mys: C.C.R. 35) that it is unnecessary to elaborate them here. It will suffice, for the purpose of the present appeal, to affirm that mere non-user for any length of time cannot take away the inherent natural right of a citizen to use the public streets for a lawful purpose in a lawful manner, as was sought to be done by the respondent; nor can such a right be extinguished even by occasional opposition or obstruction or other conduct on the part of other citizens that has not itself ripened by virtue of long and recognised acceptance into a valid custom.

(1) *Chennappa*
Setty Hachappa
3 There is little substance in the contention of the appellants that they merely figured as witnesses at the enquiry before the Amildar. The petition (Exhibit D) addressed by the 2nd appellant to the Deputy Commissioner, and the statements of the other appellants tendered before the Amildar (Exhibits C series), coupled with the oral evidence adduced on the side of the respondents show beyond doubt that they, on the contrary, actively opposed the grant to the respondent of the license that he sought to enable him to conduct without obstruction

obstruction a procession through the street in question on the occasion of his daughter's marriage.

U Here it may be noted that, though the respondent presented his application on the 12th May 1911, fully a fortnight previous to the date of the contemplated procession, it was not till the 14th August following that it was finally disposed of. It is a question whether, instead of spending ~~whether~~ three months in a leisurely ~~endeavour~~ endeavour to ascertain the mamool, it would not have been more to the purpose --- seeing that the right claimed was prima facie a lawful one, which had moreover been declared in favour of the respondent by judicial decision --- to have utilised the interval of a fortnight in taking steps to effectively safeguard its exercise; or, at any rate, if that was impossible, and the danger of a disturbance to the public tranquillity was considered to be serious and imminent, to have intimated to the respondent in time the temporary curtailment of the right claimed by him as having been called for in the interests of peace and order. This was not done; but long after the occasion itself had passed away he was furnished with an order from the Amildar requiring him to confine the procession to the Anebecdi, ~~is~~ instead of taking it on to the Desadapete. (Vide Exhibit IV). The result has been a tedious and costly litigation, with no sort of guarantee -- from the standpoint of the respondent -- that the same futile round of objections, enquiries, restrictive licenses and civil suits may not be repeated in the future. In this connection certain weighty observations made by Turner G.J. in 6 Madras ¹¹203 (at pp. 220 and 221) deserve to be quoted; the considerations suggested therein, if borne in mind and generally acted upon, are, in our opinion, calculated, not only to uphold in the eyes of the public the ability and authority

" Sundram
The Queen
Ponnusami
The Queen

of the State to protect the reasonable exercise of lawful rights against factious opposition, but also to diminish sensibly ^{the} ~~to~~ volume of unprofitable litigation of the present type. The learned Chief Judge Justice, after noticing that the several orders of Government quoted by him "instruct the Magistracy, ~~whet~~ where the exercise of a right is disputed, to maintain ancient usage, and" that they do not apply to cases where the exercise of the right is sanctioned by such usage or has been established in a court of Justice," proceeds as follows:

"Where reasonable doubt exists as to the question of right, it is no doubt the proper course for the Magistrate to have regard to usage, although the existence of the right may not depend on usage. On the other hand, if the Magistrate is satisfied of the existence of an emergency which calls for the exercise of the power conferred on him by section (144) of the Code of Criminal Procedure, (1898), he is justified in suspending the exercise of rights however well ascertained. I must nevertheless observe that this power is extraordinary, and that the Magistrate should resort to it only when he is satisfied that other powers with which he is entrusted are insufficient. Where rights are threatened, the persons entitled to them should receive the fullest protection the law affords them and circumstances admit of. It needs no argument to prove that the authority of the Magistrate should be exerted in the defence of rights rather than in their suspension; in the repression of illegal rather than in interference with lawful acts. If the Magistrate is satisfied that the exercise of a right is likely to create a riot

"riot, he can hardly be ignorant of the persons from whom disturbance is to be apprehended, and it is his duty to take from them security to keep the peace. In many instances which have come to my notice, disturbances such as those which have occurred in have been prevented by a judicious employment of the measure of precaution provided by section (107) of the Code of Criminal Procedure."

Reverting to the position occupied by the present appellants in the enquiry before the Amildar, we certainly think that, having set the local authorities in motion by their petitions, 'ahavals', and statements, with a view to prevent the respondent from exercising a lawful right, they cannot be heard to say that the interference that resulted was the doing of the Magistracy or the police, and that, beyond furnishing these with their opinion as part of the material on which they chose to take action, they themselves did not procure or bring about the result complained of by the respondent. The appellants have been rightly held liable to him in damages, and the amount awarded on this account is not in our opinion unreasonable.

The other grounds urged are equally untenable, with the exception of that relating to the amount allowed as pleader's fee. This is considerably in excess of the maximum amount prescribed by the rules for a suit in a Munsiff's court, and will therefore be reduced to Rs. 25/-.

Subject to the above modification, the decree of the court below is affirmed and this appeal dismissed with costs.

"True copy"

K. S. Chandrasekhara Aiyar
T. Paramasiva Iyer
 Registrar

Sd/- K.S.Chandrasekhara Aiyar
 Judge.

Sd/- T.Paramasiva Iyer,
 Judge

23 S.O. 72 -

Proceedings of the Government of
H.H. the Maharaja of Mysore.

Order No. 557 608

Dated Bangalore, 27, 1918.

Printed as annexures.

Pol 116-17-2

The attention of the District Magistrates is drawn to the accompanying extracts from the decisions of the Chief Court as also from the Government orders regarding the grant of permission to conduct processions in public streets. ~~Govt have had occasion to observe in some cases~~ It is observed that the principles laid down therein and so well recognised ~~are~~ have not been adhered to of late being generally overlooked by Magistrates ^{thereby} causing unnecessary expense and annoyance to parties. Government therefore direct that ~~these~~ principles be followed strictly in future.

C83
27/12

Chief Secretary to Govt.

To

The I.G. of Police in Mysore.

The Dt. Magistrates of Dts.

The Registrar, Chief Court.

Annexures.

(Here print the extracts).

13

Extract from the judgement of the Chief Court in
Second Appeal No.29 of 1890.

X

X

X

Mysore L.R.
XIII. 1.

The right claimed by the plaintiff is a natural right inherent in every subject of the State, it is the right of every person, for a lawful purpose and in a lawful manner, to use a public street by parading it with music. It is not any exclusive or exceptional right or privilege which the plaintiff claims; it is the defendants who seek to impose a disability upon the plaintiff or his castemen, and we cannot see how we can uphold the right of one section of a community to impose any disability upon another. The only limitation to the exercise of his right is, that by so doing he does not obstruct the use of the streets by other persons. Of course, when a magistrate, on any particular occasion apprehends a tumult or a breach of the public peace, of which he is the responsible custodian, he has certainly the power to limit and restrict the right and if necessary even to interdict the procession, but this is a power ^{which} can only be exercised as special occasions occur, and any general order that he may pass, abridging the natural rights of a citizen to endure to all times to come, is illegal and ultra vires. xx xx xx The plaintiff's castemen might not have used this right, claimed for a great many years, but non-user would not extinguish the right

So long as the plaintiff does not cause obstruction to the public, or other person, in the exercise of their natural rights, and so long as he does not endanger public safety, it is but right that he should be supported in the exercise of his right.

X

X

Extract from the Judgment of the Chief Court in
Second Appeal No. 38 of 1898-99.

x x x x x

x x It is the right of every person for a lawful purpose and in a lawful manner, to use a public street by parading it with music, subject to the limitation that he does not obstruct the use of the street by other person, and subject also to the control of the Magistrate and Police when necessary.

x

Extract from the judgment of the Chief Court in
Appeal No. 211 of 1908-09.

The next contention on behalf of the appellants is ~~that~~ that, as the plaintiffs never before exercised the right claimed by them, they are debarred from exercising it now. Assuming (but not conceding) that the plaintiffs never exercised this right, there is nothing to prevent them from exercising it if, as we hold, it is a natural right inherent in every person and has not been taken away by any law or custom having the force of law, since non-user of it for any length of time would not be sufficient to extinguish it. That it is a natural right recognised by law and not requiring any custom to support it, has been laid down in several cases by the Madras High Court. In Muthialu Chetti and Bapu Saib, Turner C.J. and Muthuswami Iyer J. said:- "It is a right recognised by law that persons may, for a lawful purpose, whether civil or religious, use a common highway by parading it attended by music so that they do not obstruct the use of it by other persons." This principle was affirmed in Parthasarathy

Iyengar

Parthasarathy Iyengar Vs. Chenna Krishna Iyengar and also in Sundaram Chetty Vs. The Queen. In a more recent case Sadagopachariar Vs. A. Rama Rao it was held that the right to conduct religious processions through the public streets is a right inherent in every person, provided that he does not thereby invade the rights of property enjoyed by others, or cause a public nuisance or interfere with the ordinary use of the streets by the public and provided also that he does not contravene any directions or prohibitions imposed by the Magistrates for the prevention of obstructions to thoroughfares or of breaches of the peace. It was further held that every member of the public and every sect has a right to use the streets in a lawful manner, and that it lies on -- those who seek to restrain them in its exercise to prove some law or custom having the force of law depriving him of that privilege. This view of the law was not dissented from by Their Lordships of the Privy Council when - they affirmed the decision on appeal.

The decisions of this Court in Malliah Vs. Nanja Gowda and Halaga Setty Vs. Kala Chenniah are also in accordance with the above view. Following, therefore, these decisions, we hold that the right claimed by the plaintiffs is a natural right inherent in every subject of the - State and that it must be given effect to unless it can be shown that it has been taken away by some order or custom having the force of law. The defendants in the present case did not plead the existence of such an order or custom. All that they alleged was that it was - not customary for the plaintiffs to pass in procession through the Vysia Street; but as observed above, the plaintiffs required no custom to support their natural right. The burden of proving that right had ceased to exist, lay on the defendants and they entirely failed to discharge that burden.

Extract from the judgement of the Chief Court in
Regular Appeal No.140 of 1916-17.

X

X

X

Upon the evidence also, we agree with the munsiff that the appellants, who were defendants in the court below, have failed to discharge the burden that lay on them of making out a recognised ^{valid} ~~rule~~ or custom debarring the plaintiff respondent from going in procession ~~through~~ through the Desadapete which is one of the public streets of Tyamagondlu. The principles applicable to a case of this nature have been so often judicially expounded x x x that it is unnecessary to elaborate them here. It will suffice, for the purpose of the present appeal to affirm that mere non-user for any length of time cannot take away the inherent natural right of a citizen to use the public streets for a lawful purpose in a lawful manner, as was sought to be done by the respondent, nor can such a right be extinguished even by occasional opposition or obstruction or other conduct on the part of other citizens that has not itself ripened by virtue of long and recognised acceptance into a valid custom.

X

X

X

Here it may be noted that, though the respondent presented his application on the 12th May 1911, fully a fortnight ^eprevious to the date of the contemplated procession, it was not till the 14th August following that it was finally disposed of. It is a question whether instead of spending three months in a leisurely endeavour to ascertain the mamool, it would not have been more to the purpose - seeing that the right claimed was prima facie a lawful one, which had ~~more~~ ^{ever} been declared

in favour of the respondent by judicial decision to have utilised the interval of a fortnight in taking steps to effectively safeguard its exercise; or at any rate, if that was impossible, and the danger of a disturbance to the public tranquility was considered to be serious and imminent, to have intimated to the respondent in time the temporary curtailment of the right claimed by him as having been called for in the interests of peace and order. This was not done, but long after the ~~xxxxxxx~~ occasion itself had passed away he was furnished with an order from the Amildar requiring him to confine the procession to the Anebeedi instead of taking it on the -- Desadapete. xx xx xx. The result has been a -- tedious ^{and} costly litigation, with no sort of guarantee from the standpoint of the respondent - that the same futile round of objections, ²enquiries, restrictive licenses and civil suits may not be repeated in the future. In this connection certain weighty observations made by Turner C.J. in 6 Madras 203 x x x deserve to be - quoted; the considerations suggested the rein, if borne in mind and generally acted upon, are, in our opinion, calculated, not only to uphold in the eyes of the public the ability and authority of the State to protect the reasonable exercise of lawful rights against factious opposition, but also to diminish sensibly the volume of unprofitable litigation of the present type. The learned Chief Justice, after noticing that the several orders of Government, quoted by him "instruct the magistracy, ~~when~~ when the exercise of the right is disputed, to maintain ancient usage," and that "they do not apply to cases - where the exercise of the right is sanctioned by such usage or has been established in a court of justice," proceeds as follows :-

*
Sundaram
vs
the Queen,
Ponnasami
vs
the Queen

"Where reasonable doubt ~~the proper course for the~~

17

"Where reasonable doubt exists as to the question of right, it is no doubt, the proper course for the magistrate to have regard to usage, although the ^{existence} ~~distinction~~ of the right may not depend on usage. On the other hand, if the magistrate is satisfied of ^{the} ~~an~~ existence of an emergency which calls for the exercise of the powers conferred on him by section 144 of the Code of Criminal Procedure, (1898), he is justified in suspending the exercise of the rights however well ascertained. I must nevertheless ^{observe} ~~say~~ that this power is extraordinary, and that the magistrate should resort to it only when he is satisfied that other powers with which he is entrusted are insufficient. Where rights are threatened, ^{should receive the fullest protection the law affords them} the persons entitled to them and circumstances admit of. It needs no argument to prove that the authority of the magistrate should be exerted in the defence of rights rather than in their suspension; in the repression of illegal rather than in interference with lawful acts. If the magistrate is satisfied that the exercise of a right is likely to create a riot, he can hardly be ignorant of the persons from whom disturbance is to be apprehended, and it is his duty to take from them security to keep the peace. In many instances which have come to my notice, disturbances such as those which have occurred in have been prevented by a judicious employment of the measures of precaution provided by section (107) of the Code of Criminal Procedure."

X

X

X

X

18

Extract from Government order No.109-D.H.O.. dated Mysore
27th February 1893.

x

x

x

x

8.....But is necessary to communicate for the Deputy Commissioner's future guidance the opinion of the Government as above recorded on the merits of the particular case now in question, and, at the same time, briefly to indicate to him the general principles on which this and similar other cases should be decided by the local magistracy.

(a) Where an individual's or a particular class's right to do a thing is proved, it is always the duty of the police and magistracy to permit the due exercise of that right and, where necessary, to protect and safeguard every person engaged in exercising it.

(b) Where owing to extraordinary circumstances, such protection and safeguarding is impossible, it then becomes the duty of the police and magistracy to prohibit temporarily the exercise of the right.

(c) The District Magistrate is bound always to preserve the public peace, even by prohibiting temporarily the exercise of an established right, but the occasions which really call for such temporary prohibition must be very rare indeed in every well administered district, and the prohibition, if resorted to, should be regarded as a purely temporary expedient not intended to last a day longer than really necessary.

(d) When in a town, two rival factions endeavour to thwart and annoy each other, it is a wholesome rule to maintain things in status quo and to require the party which wishes to deviate from mamul to establish its right, if any, in a court of justice. If such a rule be not observed by the Executive Officers of Government and if they hastily make a departure from Mamul, the party at whose instance the departure is

made, feels that it has secured a triumph, and the other party feels humiliated and mortified. The feeling which is uppermost in the minds of the defeated party is that the Government has yielded to clamour, and that it has not acted with justice and firmness. It is dangerous to encourage in the minds of any section of the community a sentiment that the Government is weak or partial. A policy of ~~repression~~ may, for a time, prove successful but it is neither just nor conducive to the public welfare.

x x x x x x x

Extract from Government order No.3516-24-Muzrai dated 17th May 1904.

x x x x x x x

5. x x x x it will be highly inconvenient and sometimes very harsh to deny the inhabitants the exercise of their natural rights in a proper and inoffensive manner. It is the right of every man to make any vow he pleased to any deity of his selection and the Government see no absurdity or unreasonableness in the present petitioner doing so and applying to Government for permission to carry out that vow in reference to a temple.....It is nowhere suggested that the petitioner has hit upon such a pretext for opening an old quarrel or to give offence to others; and it is absurd to contend that when at any one's request a deity is taken out in procession, the man at whose instance the procession is taken uses the street through which it passes for a purpose of his own.

The District Magistrate and Police authorities under him are bound to keep the streets clear of abnoxious people who threaten to create a breach of peace and to support the law-abiding subjects in the exercise of their rights. The question whether they are in a position to do so on any particular occasion is one which was essentially to be decided by themselves and it is for this purpose that they are armed with power to regulate processions and not to stop them altogether.

Extract from Government Order No. 4007/Muz.F.32-01 dated
24th June 1904.

X X X X X

Any wanton innovation on the part of a mischievously inclined individual or community should certainly be ~~put~~ put down with a firm hand. But, when a whole community or a majority of it develops a new order of things in the natural advancement of its progressive tendencies, the Government think that it is unfair not to allow such innocent and natural development, its full ~~pay~~ *play* even though it be against a small minority.

X X X X X

Extract from Government order No. 5096-103 $\frac{1}{2}$ dated
5th May 1906.

..... it is the duty of local officers not to allow any deviation from such ~~manu~~ manual unless danger to the public is apprehended by following it, or new conditions have arisen which make the observance of the ~~manual~~ *manu* needlessly onerous to a large section of the community. In the latter case, the departure from ~~manu~~ *manu* manual should follow as the result of a regular inquiry by the authorities -- held on the representation of the people affected and with due notice to opposite party. Local officers should not encourage applications for a deviation from ~~manu~~ *manu* manual made at the last moment when the procession or other religious observance~~s~~ is about to be started, and when the case from its nature does not permit of a calm and full investigation of the facts.

X X X X

21

Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE DEPARTMENTS.



G. O. No. G. 15597-608—Pol. 116-17-2,
dated 27th January 1919.

Processions in public streets.

Lays-down instructions in the matter of —.

Processions in public streets.

No. G. 15597-608—POL. 116-17-2, DATED 27TH JANUARY 1919.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

GENERAL AND REVENUE DEPARTMENTS

Order No. G. 15597-608—POL. 116-17-2, dated 27th January 1919.

The attention of the District Magistrates is drawn to the accompanying* extracts from the decisions of the Chief Court as also from the Government orders regarding the grant of permission to conduct processions in public streets. Government have had occasion to observe in some cases that the principles laid down therein and so well recognised have not been adhered to by Magistrates thereby causing unnecessary expense and annoyance to parties. Government therefore direct that these principles be followed strictly in future.

* Printed as annexures.

C. S. BALASUNDARAM IYER,
Chief Secretary to Government.

To—The Inspector-General of Police in Mysore.
The District Magistrates of Districts.
The Registrar, Chief Court.

Exd.—C. R.

Extract from the Judgment of the Chief Court in Second Appeal No. 29 of 1890.

The right claimed by the plaintiff is a natural right inherent in every subject of the State, it is the right of every person, for a lawful purpose and in a lawful manner, to use a public street by parading it with music. It is not any exclusive or exceptional right or privilege which the plaintiff claims; it is the defendants who seek to impose a disability upon the plaintiff or his castemen, and we cannot see how we can uphold the right of one section of a community to impose any disability upon another. The only limitation to the exercise of his right is, that by so doing he does not obstruct the use of the streets by other persons, of course, when a magistrate on any particular occasion apprehends a tumult or a breach of the public peace, of which he is the responsible custodian he has certainly the power to limit and restrict the right and if necessary even to interdict the procession, but this is a power which can only be exercised as special occasions occur and any general order that he may pass, abridging the natural rights of a citizen to endure to all times to come, is illegal and *ultra vires*.....The plaintiff's castemen might not have used this right, claimed for a great many years, but non-user would not extinguish the right.

So long as the plaintiff does not cause obstruction to the public, or other person, in the exercise of their natural rights and so long as he does not endanger public safety, it is but right that he should be supported in the exercise of his right. Mysore L. R. xiii. 1

Extract from the Judgment of the Chief Court in Second Appeal No. 38 of 1898-99.

.....It is the right of every person for a lawful purpose and in a lawful manner, to use a public street by parading it with music, subject to the limitation that he does not obstruct the use of the street by other person, and subject also to the control of the Magistrate and Police when necessary.

No. G. 15597-608—POL. 116-17-2, DATED 27TH JANUARY 1919.

Extract from the Judgment of the Chief Court in Appeal No. 211 of 1908-09.

The next contention on behalf of the appellants is that, as the plaintiffs never before exercised the right claimed by them, they are debarred from exercising it now. Assuming (but not conceding) that the plaintiffs never exercised this right, there is nothing to prevent them from exercising it if, as we hold, it is a natural right inherent in every person and has been taken away by any law or custom having the force of law, since non-user of it for any length of time would not be sufficient to extinguish it. That it is a natural right recognised by law and not requiring any custom to support it, has been laid down in several cases by the Madras High Court. In *Muthialu Chetti and Bapu Saib, Turner, C. J. and Muthuswami Iyer, J.* said: "It is a right recognised by law that persons may, for a lawful purpose, whether civil or religious, use a common highway by parading it attended by music so that they do not obstruct the use of it by other persons". This principle was affirmed in *Parthasarathy Iyengar vs. Chenna Krishna Iyengar* and also in *Sundaram Chetty vs. The Queen*. In a more recent case *Sadagopachariar, vs. A. Rama Rao*, it was held that the right to conduct religious processions through the public streets is a right inherent in every person, provided that he does not thereby invade the rights of property enjoyed by others, or cause a public nuisance or interfere with the ordinary use of the streets by the public and provided also that he does not contravene any directions or prohibitions imposed by the Magistrates for the prevention of obstructions to thoroughfares or of breaches of the peace. It was further held that every member of the public and every sect has a right to use the streets in a lawful manner, and that it lies on those who seek to restrain them in its exercise to prove some law or custom having the force of law depriving him of that privilege. This view of the law was not dissented from by Their Lordships of the Privy Council when they affirmed the decision on appeal.

The decisions of this court in *Mallaiah vs. Nanja Gowda* and *Halaga Setty vs. Kala Chenniah* are also in accordance with the above view. Following, therefore, these decisions, we hold that the right claimed by the plaintiffs is a natural right inherent in every subject of the State and that it must be given effect to unless it can be shown that it has been taken away by some order or custom having the force of law. The defendants in the present case did not plead the existence of such an order or custom. All that they alleged was that it was not customary for the plaintiffs to pass in procession through the Vysia street; but as observed above, the plaintiffs required no custom to support their natural right. The burden of proving that right had ceased to exist, lay on the defendants and they entirely failed to discharge that burden.

Extract from the Judgment of the Chief Court in Regular Appeal No. 140 of 1916-17.

Upon the evidence also, we agree with the munsiff that the appellants, who were defendants in the Court below, have failed to discharge the burden that lay on them of making out a recognised valid custom debarring the plaintiff respondent from going in procession through the Desadapete which is one of the public streets of Tyamagondlu. The principles applicable to a case of this nature have been so often judicially expounded, that it is unnecessary to elaborate them here. It will suffice, for the purpose of the present appeal to affirm that mere non-user for any length of time cannot take away the inherent natural right of a citizen to use the public streets for a lawful purpose in a lawful manner, as was sought to be done by the respondent, nor can such a right be extinguished even by occasional opposition or obstruction or other conduct on the part of other citizens that has not itself ripened by virtue of long and recognised acceptance into a valid custom.

Here it may be noted that, though the respondent presented his application on the 12th May 1911, fully a fortnight previous to the date of the contemplated procession, it was not till the 14th August following that it was finally disposed of. It is a question whether instead of spending three months in a leisurely endeavour to ascertain the *mamool*, it would not have been more to the purpose seeing that the right claimed was *prima facie* a lawful one, which had moreover been declared in favour of the respondent by judicial decision to have utilised the interval of a fortnight in taking steps to effectively safeguard its exercise; or at any rate, if that was impossible and the danger of a disturbance to the public tranquillity was considered to be serious and imminent, to have intimated to the respondent in time the temporary curtailment of the right claimed by him as having been called for in the interests of peace and order. This was not done, but long after the

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occasion itself had passed away he was furnished with an order from the Amildar requiring him to confine the procession to the Anebedi instead of taking it on the Desadapete.

The result has been a tedious and costly litigation, with no sort of guarantee from the standpoint of the respondent — that the same futile round of objections, enquiries, restrictive licenses and civil suits made not be repeated in the future. In this connection certain weighty observations made by Turner, Chief Judge, in 6 Madras 203 (*Sundaram vs. the Queen*; *Ponnaswami vs. the Queen*), deserve to be quoted; the consideration suggested therein, if borne in mind and generally acted upon, are, in our opinion calculated not only to uphold in the eyes of the public the ability and authority of the State to protect reasonable exercise of lawful rights against factious opposition, but also to diminish sensibly the volume of unprofitable litigation of the present type. The learned Chief Justice, after noticing that the several orders of Government, quoted by him "instruct the magistracy, when the exercise of the right is disputed, to maintain ancient usage" and that "they do not apply to cases where the exercise of the right is sanctioned by such usage or has been established in a court of justice" proceeds as follows:—

"Where reasonable doubt exists as to the question of right, it is no doubt, the proper course for the magistrate to have regard to usage, although the existence of the right may not depend on usage. On the other hand, if the magistrate is satisfied of the existence of emergency which calls for the exercise of the powers conferred on him by section 144 of the Code of Criminal Procedure, 1898, he is justified in suspending the exercise of the rights, however well ascertained. I must nevertheless observe that this power is extraordinary, and that the Magistrate should resort to it only when he is satisfied that other powers with which he is entrusted are insufficient. Where rights are threatened the persons entitled to them should receive the fullest protection the law affords them and circumstances admit of. It needs no argument to prove that the authority of the Magistrate should be exerted in the defence of rights rather than in their suspension in the repression of illegal rather than in interference with lawful acts. If the Magistrate is satisfied that the exercise of a right is likely to create a riot, he can hardly be ignorant of the persons from whom disturbance is to be apprehended, and it is his duty to take from them security to keep the peace. In many instances which have come to my notice, disturbances such as those which have occurred in . . . have been prevented by a judicious employment of the measures of precaution provided by section 107 of the Code of Criminal Procedure."

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Extract from Government Order No. 109—D. H. O., dated Mysore 27th February 1893

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8. But is necessary to communicate for the Deputy Commissioner's future guidance the opinion of the Government as above recorded on the merits of the particular case now in question, and, at the same time, briefly to indicate to him the general principles on which this and similar other cases should be decided by the local magistracy.

(a) Where an individual's or a particular class' right to do a thing is proved, it is always the duty of the police and magistracy to permit the due exercise of that right and, where necessary to protect and safeguard every person engaged in exercising it.

(b) Where owing to extraordinary circumstances, such protection and safeguarding is impossible, it then becomes the duty of the police and magistracy to prohibit temporarily the exercise of the right.

(c) The District Magistrate is bound always to preserve the public peace, even by prohibiting temporarily the exercise of an established right, but the occasions which really call for such temporary prohibition must be very rare indeed in every well administered district, and the prohibition, if restored to, should be regarded as a purely temporary expedient not intended to last a day longer than really necessary.

(d) When in a town, two rival factions endeavour to thwart and annoy each other, it is a wholesome rule to maintain things in *status quo* and to require the party which wishes to deviate from *māmul* to establish its right, if any, in a court of justice. If such a rule be not observed by the executive officers of Government and if they hastily make a departure from *Mamul*, the party at whose instance the departure is made; feels that it has secured a triumph, and the other party feels humiliated and mortified. The feeling which is uppermost in the minds of the defeated party is that the Government has yielded to clamour and that it has not acted with justice and firmness. It is dangerous to encourage in the minds of any section of the community a sentiment that the Government is weak or partial. A policy of repression may, for a time prove successful but it is neither just nor conducive to the public welfare.

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Extract from Government Order No. 3516 24--Muzrai, dated 17th May 1904.

5. it will be highly inconvenient and sometimes very harsh to deny the inhabitants the exercise of their natural rights in a proper and inoffensive manner. It is the right of every man to make any vow he pleases to any diety of his selection and the Government see no absurdity or unreasonableness in the present petitioner doing so and applying to Government for permission to carry out that vow in reference to a temple.. It is nowhere suggested that the petitioner has hit upon such a pretext for opening an old quarrel or to give offence to others; and it is absurd to contend that when at any one's request a diety is taken out in procession.....the man at whose instance the procession is taken uses the street through which it passes for a purpose of his own.

The District Magistrates and Police authorities under him are bound to keep the streets clear of abnoxious people who threaten to create a breach of peace and to support the law-abiding subjects in the exercise of their rights. The question whether they are in a position to do so on any particular occasion is one which was essentially to be decided by themselves and it is for this purpose that they are armed with power to regulate processions and not to stop them altogether.

Extract from Government Order No 4007--Muz. F. 32-01, dated 24th June 1904.

Any wanton innovation on the part of a mischievously inclined individual or community should certainly put down with a firm hand. But when a whole community or a majority of it develops a new order of things in the natural advancement of its progressive tendencies, the Government think that it is unfair not to allow such innocent and natural development, its full play even though it be against a small minority.

Extract from Government Order No. 5096-103½, dated 5th May 1906,

.....it is the duty of local officers not to allow any deviation from such mamul unless danger to the public is apprehended by following it, or new conditions have arisen which make the observance of the mamul needlessly onerous to a large section of the community. In the latter case, the departure from mamul should follow as the result of a regular inquiry by the authorities held on the representation of the people affected and with due notice to opposite party. Local officers should not encourage applications for a deviation from mamul made at the last moment when the procession or other religious observance is about to be started, and when the case from its nature does not permit of a claim and full investigation of the fact.